

PATENT APPLICATION

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re application of

Docket No: Q74306

Jean-Claude HAUER, et al.

Appln. No.: 10/684,464

Group Art Unit: 3633

Confirmation No.: 4684

Examiner: Basil S. KATCHEVES

Filed: October 15, 2003

For: CLOSING DEVICE

REPLY BRIEF PURSUANT TO 37 C.F.R. § 41.41

MAIL STOP APPEAL BRIEF - PATENTS

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In accordance with the provisions of 37 C.F.R. § 41.41, Appellant respectfully submits this Reply Brief in response to the Examiner's Answer dated January 15, 2009. Entry of this Reply Brief is respectfully requested.

Table of Contents

STATUS OF CLAIMS.....	2
GROUND OF REJECTION TO BE REVIEWED ON APPEAL.....	2
ARGUMENT.....	3
CONCLUSION.....	9

REPLY BRIEF UNDER 37 C.F.R. § 41.41
U.S. Appln. No.: 10/684,464

STATUS OF CLAIMS

Claims 1-6, 8-14, 18-21 and 25-34 are all the claims pending in the application.

Claims 7, 15-17, 22-24 are cancelled.

The Examiner has objected to claims 4, 5, 8, 13, 14, 20, 21, 29, 33 and 34.

Claims 1-3, 6, 9-12, 18, 19, 25-28, and 30-32 are rejected and are the subject of this appeal.

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

1. Whether claims 1, 3, 6, 9, 12, 19, 27, 28, 30, and 31 are anticipated under 35 U.S.C. § 102(b) by U.S. Patent No. 2,012,885 to Lovatt.
2. Whether claims 2, 10, 11, 18, 25, 26 and 32 are obvious under 35 U.S.C. § 103(a) as being unpatentable over Lovatt.

ARGUMENT

Applicant provides the following additional remarks in response to the Examiner's comments.

Claim 1

With respect to independent claim 1, the Examiner maintains the position that the hook portion 48 of Lovatt's hinge block or knuckle 43¹ corresponds to the recited "plug," asserting that the hook inherently can perform the recited functions of the plug. Applicant respectfully disagrees.

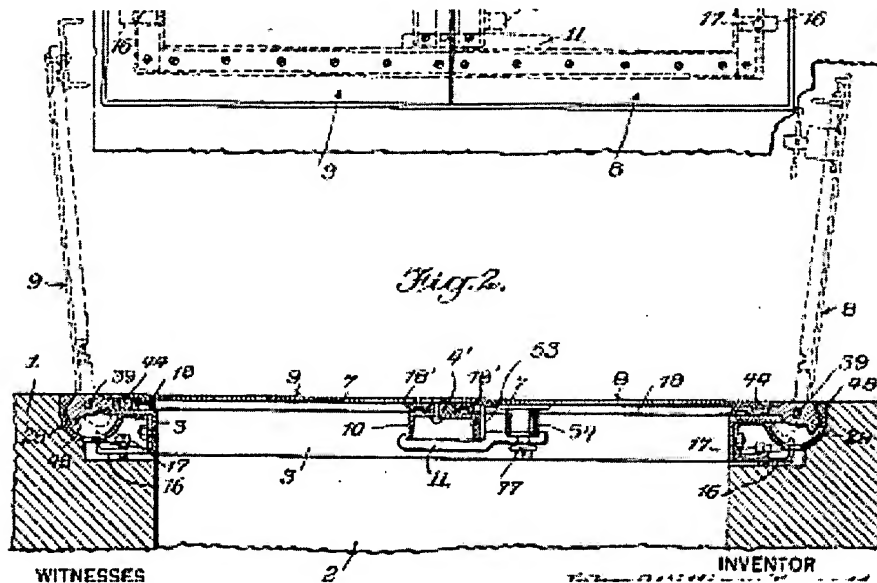
Claim 1 recites that the plug is (1) *an inserted plug*, (2) that is "positioned in the inner recess (50) to close the opening of the inner recess," and (3) that is "located below the cover hinge knuckle."² Since an *inserted structure* must be a separate structure to be "insertable," Lovatt's hook portion 48 cannot meet the recitations of claim 1.

That is, as mentioned in the Appeal Brief, Lovatt's hook portion 48 is not a structure is capable of being inserted into an inner recess of the frame 3 and is not a structure of that is below the cover's hinge knuckle 43. Instead, the hook 48 is *a part of the hinge knuckle 43* that is attached to the cover plate 7 and is therefore a part Lovatt's cover structure (i.e., door 8). Lovatt discloses that the knuckle 43 and cover plate 7 (together, forming the cover structure) swing

¹ See Lovatt at FIG. 5.

² As shown in FIG. 1 of the present specification, the plug 52 closes the opening of the inner recess 50, thus sealing off the inner side of the frame hinge knuckle 18 from the outside. As also shown in FIG. 1, the plug 52 prevents gravel 70 and/or most rain water from entering a pipe 11 provided underneath the cover 6.² As shown in FIG. 1, the plug 52 is located below the cover hinge knuckle 20.

together around the pintle 39, which is provided within the knuckle 43.³ Thus, as shown in the dashed lines of Lovatt's FIG. 2 (reproduced below), the hook 48 is a part of the actual *hinge knuckle* of Lovatt's cover and is not an insertable structure that is provided below the hinge knuckle.



Moreover, the steel constitution of Lovatt's knuckle structure 43 is necessary to allow rotation of the cover relative to the frame. However, due to the play between the cover and frame hinge knuckles, i.e., the pivot (block 43 and hook 48) of Lovatt cannot prevent rainwater and small debris from entering the frame hinge knuckle and then being evacuated by gravity

³ See Lovatt at page 2, col. 2, lines 30-36 ("Arranged between the block 36 and 37 are is a hinge block or knuckle 43 which is provided with an extension 44 secured to the cover plate 7 by a suitable screw 45 whereby the knuckle 43 and the cover plate will swing together around the pintle 39 which is supported by the blocks 36 and 37.")

through the vent opening 50 towards the inner side of the frame.⁴ As such, the alleged plug (i.e., hook 48) cannot seal off the inner side of the frame from the outside and thus *is not capable of* making “the inner side of the frame hinge knuckle (18) appreciably sealed off from the outside.”

In addition, the Examiner asserts⁵ that the upper part of Lovatt’s opening that includes the knuckle 43 corresponds to the recited “pass through hinge knuckle opening (40).” However, the opening in Lovatt cannot correspond to this recited opening because the recited opening (40) is located between two *distinct recesses*, an outer recess (i.e., 19) and an inner recess (i.e., 50), the outer recess receiving the cover hinge knuckle pivot when the cover is in the closed position and the inner recess receiving the inserted plug (52). In contrast, as shown in FIG. 5 of Lovatt, Lovatt’s frame hinge knuckle 28, 29, 33, 39 defines only one recess 33, which is open to the outside of the frame, i.e., top opening of the chamber 33, and to the inside of the frame, i.e., vent opening 50, and into which the cover hinge knuckle 43, 44, 45, 48 extends.

Thus, Lovatt cannot meet all of the recitations of claim 1.

Claim 27

With respect to independent claim 27, the Examiner also maintains the position that the hook 48 of Lovatt’s hinge knuckle 43 corresponds to the recited “plug,” asserting that the hook inherently can perform the recited functions of the plug. Applicant respectfully disagrees.

Claim 27 recites that the plug is “*separate from said cover* and disposed below the hinge portion of the cover” (emphasis added). Because Lovatt’s hook 48 is a part of the hinge portion

⁴ Lovatt at page 2, column 2, lines 47-50.

⁵ See Examiner’s Answer at last full paragraph of page 3.

of Lovatt's cover structure, Lovatt cannot reasonably meet this structure. That is, as shown in the dashed lines of Lovatt's FIG. 2, the hook 48 is a part of the *actual hinge portion* (i.e., hinge knuckle 43 of Lovatt's cover structure (which swings around the hinge) and cannot reasonably be considered a separate structure that is provided below the hinge portion of a cover.

Moreover, as discussed above, the upper part of Lovatt's opening that includes the knuckle 43 corresponds to the recited "pass through opening through which the outer recess and inner recess communicate."

Thus, Lovatt cannot meet all of the recitations of claim 27.

Claim 30

With respect to independent claim 30, the Examiner also maintains the position that the hook 48 of Lovatt's hinge knuckle 43 corresponds to the recited "plug," asserting that the hook inherently can perform the recited functions of the plug. Applicant respectfully disagrees.

Claim 30 recites a closing device including "a cover which is movable between a closed position of closing the access opening and an open position of leaving the access opening open; and a plug; ... wherein the plug is disposed in a recess below the end of the cover." Thus, claim 30 recites that a plug is disposed in a recess below the end of a movable cover.

In contrast, Lovatt's hook 48 is a part of the hinge knuckle 43 at the end of Lovatt's cover structure. That is, as shown in the dashed lines of Lovatt's FIG. 2, the hook 48 is provided at the end of the *actual hinge portion* of Lovatt's cover structure (which swings around the hinge) and cannot reasonably be considered a disposed in a recess below the end of the cover.

Thus, Lovatt cannot meet all of the recitations of claim 30.

Claims 2, 26, and 32

With respect to dependent claims 2, 26, and 32, the Examiner seems to acknowledge that Lovatt's steel knuckle 43, which includes the hook portion 48, is not made from a material that would be considered "elastically deformable" to one of ordinary skill, but the Examiner asserts that it would have been obvious to provide the hook portion 48 as an elastomer in order to "create a better seal between" the knuckle assembly and component 47.⁶

Applicant respectfully disagrees.

Lovatt's elastomer gasket 18, which as shown in FIG. 2 of Lovatt, along with another gasket 18', mates with Lovatt's cover structure (i.e., door 8) and provides a watertight and airtight seal for the *large opening* 2.⁷ However, there is no reason of record to modify Lovatt's hinge knuckle 43 with hook portion 48 so that it is also made of elastomer--only the Examiner's unsupported assertions.⁸

First, Lovatt's hinge knuckle 43, like the *cover knuckle 20 of the present exemplary embodiment*, is made of the *same material* as the rest of the movable cover structure. This is evidence that one of ordinary skill would not want to provide Lovatt's knuckle 43 from a different material than the rest of the cover structure.

⁶ See Examiner's Answer at page 6.

⁷ See Lovatt at page 2, col. 1, lines 36-62.

⁸ See *KSR v. Teleflex*, 82 USPQ2d 1385, 1396, 127 S.Ct. 1727, 167 L.Ed.2d 705 (U.S. 2007), quoting *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329 (CA Fed. 2006) ("[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness").

Second, the hinge knuckle 43 and hook 48 do not provide the same function as the gasket 18 because they are not members that *mate with the cover structure* to provide a sealing, as Lovatt's gaskets do.² Instead, as shown in FIG. 2 of Lovatt, the hinge 43 and hook 48 are structures of the movable cover.

Third, as shown in FIG. 2 of Lovatt, the knuckle structure 43 is not provided above the large opening 2 and therefore it cannot provide the same function as the gasket 18--*sealing the large opening 2*. There is no evidence that the same airtight sealing would be desirable between Lovatt's cover and the casing 29.

Fourth, Lovatt's hook 48 is adapted to rest against an outer surface 49 of the frame when the cover is fully opened.¹⁰ The function of the hook 48 is thus to limit the swinging open position of the cover with respect to its closed position, and there is no indication in Lovatt that the hook 48 *has any sealing function*. More, since the hook 48 constitutes part of the cover hinge knuckle 43, which is formed from steel¹¹ and since the hook 48 must be able to rest against the surface 49 in order to prevent further swinging of the cover, the hook *cannot be made of an elastically deformable material*, such as an elastomer, contrary to the Examiner's assertion.

Thus, the Examiner's assertions are unsupported, and it would not have been obvious to provide the devices of dependent claims 2, 26, and 32.

² Contrast with *KSR v. Teleflex*, 82 USPQ2d at 1389 (The improvement must be "more than the predictable use of prior art elements according to their established functions.").

¹⁰ Lovatt at page 2, column 2, lines 40-46.

¹¹ Lovatt at page 2, column 1, lines 66 to column 2, line 2 of Lovatt

REPLY BRIEF UNDER 37 C.F.R. § 41.41
U.S. Appln. No.: 10/684,464

CONCLUSION

For the above reasons as well as the reasons set forth in Appeal Brief, Appellant respectfully requests that the Board reverse the Examiner's rejections of all claims on Appeal. An early and favorable decision on the merits of this Appeal is respectfully requested.

Respectfully submitted,

/John M. Bird/

SUGHRUE MION, PLLC
Telephone: (202) 293-7060
Facsimile: (202) 293-7860

WASHINGTON OFFICE

23373

CUSTOMER NUMBER

John M. Bird
Registration No. 46,027

Date: March 13, 2009